

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ANGELA B. MATTHEWS**

Claimant

VS.

**FOUR B CORPORATION, d.b.a. HEN HOUSE  
SUPERMARKET; ASSOCIATED WHOLESALE  
GROCERS; and U.S.D. #500**

Respondents

AND

**WAUSAU INSURANCE COMPANIES**

Insurance Carrier

Docket Nos. 227,974;  
228,635; 231,110

**ORDER**

Both Associated Wholesale Grocers and Four B Corporation, d.b.a. Hen House Supermarket, appealed the Preliminary Decision dated April 10, 1998, entered by Administrative Law Judge Robert H. Foerschler.

**ISSUES**

The Administrative Law Judge consolidated the three above-docketed claims and ordered the three respondents, Four B Corporation, d.b.a. Hen House Supermarket (Four B), Associated Wholesale Grocers (AWG), and U.S. D. #500, to equally share the cost of an independent medical evaluation that would provide the Judge with additional information to help determine the issues raised in these claims.

In its Notice of Appeal, Four B requested the Appeals Board to review the following issues:

- (1) Did claimant suffer an accidental injury on the date alleged while employed with Four B?
- (2) If so, did claimant's accidental injury arise out of and in the course of her employment with Four B?
- (3) Did claimant give timely notice of accidental injury to Four B?
- (4) Did claimant serve timely written claim upon Four B?

- (5) Is the current claim for medical treatment related to an injury sustained at Four B or a later injury sustained while working for another employer?
- (6) Did the Administrative Law Judge exceed his authority by consolidating these claims?
- (7) Did the Administrative Law Judge exceed his authority by apportioning the cost of the independent medical evaluation?

In its application for review and brief, AWG raised the following issues:

- (1) Did claimant sustain personal injury by accident arising out of and in the course of employment with AWG?
- (2) Did the Administrative Law Judge err by consolidating the three claims?
- (3) Did the Administrative Law Judge err by requiring the three respondents to equally share the cost of the independent medical evaluation?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

For preliminary hearing purposes, the Appeals Board finds:

The preliminary hearing order should be affirmed.

Claimant alleges she sustained repetitive use injuries to her hands and arms while working for the three named respondents. Claimant has filed three separate applications for hearing with the Division of Workers Compensation. In October 1997, claimant filed the first application alleging she developed bilateral carpal tunnel syndrome while working for Four B. That claim, which the Division assigned Docket No. 227,974, alleges a March 11, 1997, date of accident. The second application, which was filed in November 1997 and which names AWG as the employer, alleges November 9, 1997, as the appropriate date of accident for repetitive injury to the arms. That claim, which claimant now advises the correct date of accident is October 9, 1997, was assigned Docket No. 228,635. The third application, which was filed in February 1998 and assigned Docket No. 231,110, named U.S.D. #500 as the respondent and alleged a period of accidental injury to both hands, wrists, and arms from October 21, 1997, to February 12, 1998.

At the April 9, 1998 hearing, Judge Foerschler consolidated the three claims for preliminary hearing purposes. The Judge also ordered the parties to select a mutually acceptable doctor to evaluate claimant and provide a medical history and opinions regarding claimant's present condition and recommended treatment. At the hearing none of the parties

objected to the consolidation or equally dividing the cost of the independent medical evaluation.

It is apparent from the transcript that the Judge desired the evaluation and report to assist him in determining who would be responsible for claimant's benefits. It is also apparent from the transcript that the various legal issues in the different claims were reserved to be decided at a later time. That conclusion is supported by the statements made by counsel at the hearing, including those of Mr. Powers, the attorney representing Four B, who advised the Judge that he wanted to preserve the jurisdictional issues of timely notice, timely written claim, and whether claimant's injuries arose out of and in the course of her employment. In the April 10, 1998 order, the Judge did not determine date of accident or which respondent should be responsible for any medical that claimant may now need.

Because the Administrative Law Judge did not address the issues concerning the compensability of the claims but reserved them for later determination, the request to review those issues is premature.

The Administrative Law Judge had both the authority to consolidate these claims and the authority to order the three respondents to equally share the cost of the independent medical evaluation. Those determinations are not reviewable under K.S.A. 1997 Supp. 44-534a, which grants the Appeals Board authority to review specific jurisdictional preliminary hearing findings.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision dated April 10, 1998, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1998.

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BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS  
H. Wayne Powers, Overland Park, KS  
Joseph R. Ebbert, Kansas City, KS  
Frederick J. Greenbaum, Kansas City, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director